

144089



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C Construction Co., Inc.

File: B-242717

Date: June 6, 1991

Thomas E. Abernathy IV, Esq., Smith, Currie & Hancock, for the protester,
Paul M. Fisher, Esq., Naval Facilities Engineering Command, for the agency,
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected bidder's request to correct a mistake in its bid based upon an error in a subcontractor's quote, where the requested correction would be based on a quote from a subcontractor other than the one upon which the original bid was based and would bring the bid to within 1.2 percent of the next low bid.

DECISION

C Construction Co., Inc. protests the rejection of its bid under invitation for bids (IFB) No. N62470-88-B-8092, issued by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC), Norfolk, Virginia, for an aircraft maintenance hangar addition and flight line security improvements at the Marine Corps Air Station, New River, North Carolina.

We deny the protest.

Four bids were submitted by the bid opening date of August 21, 1990. C Construction was the apparent low bidder at \$5,098,400 and ECI Construction, Inc. was the apparent second low bidder at \$5,265,460.

By letter dated August 30, 1990, C Construction alleged a mistake in bid to the contracting officer. Specifically, C Construction reported that its electrical subcontractor, Regency Electric Company, claimed it made a clerical error in its own bid preparation, resulting in a quote to the protester that was understated by \$292,000. C Construction requested an

upward correction of its bid by \$105,000, an amount representing the approximate difference between Regency's mistaken quote and the quote of the second low subcontractor, Southerland Electric Company.^{1/} In the event that the agency would not permit correction, C Construction agreed to accept award at its original, but mistaken, bid price, reserving the right to seek post-award correction of its bid price.

In support of its request, C Construction submitted its worksheets, subcontractor telephone quotation sheets, and back-up data from Regency to demonstrate the bidding error. The Regency worksheets reveal a transposition error in the amount bid on the line item for miscellaneous material. The extended price sheet showed an amount of \$324,722.58, while the recapitulated price sheet showed \$32,722.00 for this item. The Navy was satisfied with C Construction's evidence that a mistake was made.

C Construction did not seek to establish its intended bid by using Regency's corrected quote; this would have displaced C Construction as the lowest bidder by raising its price \$292,000. Rather, C Construction submitted letters and affidavits of its officers asserting that the company's policy is to base its bid on the quote of the lowest responsive subcontractor. Thus, C Construction asserts Southerland would have been awarded the electrical work subcontract if Regency had discovered its error before bid opening.

On January 24, 1991, the agency determined that C Construction's assertion of company policy regarding the selection of subcontractors was insufficient to establish, by clear and convincing evidence, the intended bid price. Thus, C Construction's request for bid correction, as well as its request to waive the error and accept award at the original bid price, were denied and C Construction's bid was rejected. This protest followed.

The mistake in bid rules of the Federal Acquisition Regulation (FAR) provide a mechanism for granting relief to bidders who establish, after bid opening, that there is a mistake in the bid submitted. See FAR § 14.406. In most cases, the bidder, upon establishing the existence of a bid mistake, is permitted to withdraw the bid. FAR § 14.406-3(c). In some cases, where the bidder presents clear and convincing evidence of both the existence of the mistake and of the bid intended, the bid may be upwardly corrected, provided that the correction would not displace another bidder. FAR § 14.406-3(a).

^{1/} Regency's quote to C Construction for the electrical work was \$1,132,925, while Southerland's was \$1,238,000.

Since mistake in bid relief is based upon a showing that other than the intended bid was submitted, relief (in the form of correction) generally is not allowed when the bidder seeks to revise the bid to reflect something other than what the bidder intended. See 51 Comp. Gen. 18 (1971); see also Handy Tool & Mfg. Co., Inc., 60 Comp. Gen. 189 (1981), 81-1 CPD ¶ 27. Thus, a bidder generally may not obtain correction for even a clearly mistaken bid based on computations or recomputations performed after bid opening to reflect a price that the bidder never intended before bid opening. Conner Bros. Constr. Co., Inc., B-228232.2, Feb. 3, 1988, 88-1 CPD ¶ 103.

One exception to this general rule involves nonjudgmental mistakes made by suppliers and subcontractors. Since a bidder normally is not aware of an error in a subcontractor quote at the time the bidder computes its bid, the bid submitted is actually the bid intended by the bidder. Nonetheless, mistake in bid relief is permitted in certain circumstances on the basis that the subcontractor's error precludes the bidder from making a knowing judgment about its actual intended bid. See Handy Tool & Mfg. Co., Inc., 60 Comp. Gen. 189, supra; MKB Mfg. Corp., 59 Comp. Gen. 195 (1980), 80-1 CPD ¶ 34; Robert E. McKee, Inc., B-181872, Nov. 5, 1974, 74-2 CPD ¶ 237. Thus, bid correction has been allowed based on correction of the subcontractor's original erroneous quote. See, e.g., Robert E. McKee, Inc., supra.


Whether correction should be allowed in a case such as this is a more difficult question, however, because the protester seeks to correct its bid not on the basis of the corrected subcontractor quote, but on the basis of another subcontractor's quote that purportedly would have been the basis for the bid had an error not been made in the quote originally relied on. Allowing such a correction obviously involves permitting some bid recomputation, as well as the need for the bidder to establish that the bid would have been based on the other quote and what such a bid, either exactly or within a narrow range of uncertainty, would have been. Since selection of a subcontractor need not be based on the low quote, but may reflect other considerations such as long-term business relationships and the bidder's confidence in the subcontractor's ability to timely perform, the bidder has a considerable evidentiary burden in this respect. Nonetheless, this limited recomputation is permitted in the rare case where the bidder can establish what the intended bid would have been to within a narrow range of uncertainty, but only where that

range is significantly below the next low bid. Vrooman Constructors, Inc., B-218610, Oct. 2, 1985, 85-2 CPD ¶ 369, aff'd, B-218610.2, Mar. 17, 1986, 86-1 CPD ¶ 257; see also Conner Bros. Constr. Co., Inc., B-228232.2, supra (insufficient evidence for correction); Roebbelen Eng'g, Inc., B-219929, Dec. 20, 1985, 85-2 CPD ¶ 691, aff'd, B-219929.2, Mar. 31, 1986, 86-1 CPD ¶ 301 (insufficient evidence for correction).

C Construction's requested correction would bring its bid to within 1.2 percent of the next low bid. Thus, the bid, as corrected, clearly would not be significantly below the next low bid. Although C Construction has submitted subcontractor telephone quote sheets and affidavits stating that its corporate policy was to base its bid price on the quote of the lowest responsive subcontractor, we do not view this evidence as sufficient to establish the alleged intended bid in light of this 1.2 percent difference. See Conner Bros. Constr. Co., Inc., B-228232.2, supra; Roebbelen Eng'g, Inc.--Recon., B-219929.2, supra. Therefore, correction is not appropriate here.

C Construction requests that if correction is not allowed it be permitted to waive its mistake and receive award at its original bid price. Ordinarily, where a bidder alleges mistake after bid opening, it is not then free to waive its mistake claim and receive award at the original price. DSG Corp., B-210818.3; B-213173, Apr. 25, 1984, 84-1 CPD ¶ 476. We have permitted a limited exception to this rule where the bidder can prove that the intended bid would remain the lowest, even though the bidder could not prove the amount of the intended bid for the purposes of bid correction. Id. C Construction can make no such showing, since C Construction concedes that its bid included a subcontractor quote that was understated by \$292,000 and, as stated above, the evidence is insufficient to establish that C Construction's bid in fact would have remained below the next low bid.

The protest is denied.


for James F. Hinchman
General Counsel